

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHAWN D. FRANCIS,	)	
	)	No. 63433-0-I
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
DEPARTMENT OF CORRECTIONS, a	)	
subdivision of the State of Washington,	)	
	)	FILED: February 1, 2010
Respondent.	)	

Grosse, J. — The one-year statute of limitations within which to bring an action under the Public Records Act (PRA), chapter 42.56 RCW, does not begin to run until an agency claims an exemption. Here, the requestor discovered additional documents that should have been disclosed to him more than a year ago when he initiated his original public records request. However, because the agency never claimed those documents were exempt, the statute of limitations was never triggered and it was therefore error for the trial court to find the action time-barred in a CR 12(b)(6) motion. We reverse and remand.

### FACTS

Shawn Francis, an inmate in the Monroe Correctional Facility, requested records from the Department of Corrections (DOC) pertaining to purchases made by Monroe's extended family visiting program. On August 23, 2007, DOC responded, acknowledging the request and asking for clarification. On September 27, 2007, Francis replied, clarifying and expanding his request. On

October 3, 2007, DOC acknowledged that request and on October 22, informed Francis that a document had been recovered and requested payment for its costs. On November 5, 2007, DOC transmitted a one-page document and a denial of disclosure form relating to the redaction of the account number from the document.

Over a year after his request, Francis claimed that he discovered additional documents that fell within the parameters of his initial records request. He discovered these documents when a fellow inmate showed him various purchase orders that fell within the ambit of his PRA request. Within one month of learning of the existence of these documents, Francis filed this suit requesting the documents and penalties for failure to do so.

DOC filed a CR 12(b)(6) motion to dismiss arguing that that Francis had failed to file his suit within the one-year statute of limitations as provided in RCW 42.56.550(6). The trial court dismissed Francis' action as time-barred and declined to apply the discovery rule to permit Francis additional time. Francis appeals, arguing that the discovery rule applies.

#### ANALYSIS

The PRA was enacted by initiative in 1972.<sup>1</sup> The legislation “is a strongly worded mandate for broad disclosure of public records.”<sup>2</sup> The PRA requires that public records be available for inspection unless the record is specifically exempt.

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<sup>1</sup> Initiative 276 (Laws of 1973, ch. 1, § 31).

<sup>2</sup> Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 730, 174 P.3d 60 (2007) (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)).

In 2005, the legislature amended RCW 42.56.550(6)<sup>3</sup> of the PRA to provide a one-year statute of limitations to bring actions under the PRA:

Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

When the meaning of statutory language is plain on its face, we must give effect to that meaning.<sup>4</sup> Here, the language is clear that the action must be filed within one year of either (1) an agency's claim of exemption or (2) the last production of a record on a partial or installment basis. Neither of these conditions are present here. Accordingly, we reverse the trial court. Our holding is in accord with a recent Supreme Court case, Rental Housing Association of Puget Sound v. City of Des Moines,<sup>5</sup> which held that the PRA statute of limitations is not triggered until the agency files a privilege log identifying the exemptions under which it is withholding documents.<sup>6</sup>

Additionally, the PRA provides that an individual who prevails against an agency is entitled to all costs including reasonable attorney fees. RCW 42.56.550(4). That statute has been held to apply to attorney fees and costs on appeal.<sup>7</sup> Because we cannot tell from the record before us whether or not a

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<sup>3</sup> Former RCW 42.17.340 (2004) (recodified as RCW 42.56.550 by Laws of 2005, ch. 274, § 103); RCW 42.56.550(6) (amended by Laws of 2005, ch. 483, § 5).

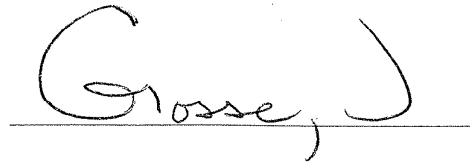
<sup>4</sup> City of Spokane v. Spokane County, 158 Wn.2d 661, 673, 146 P.3d 893 (2006).

<sup>5</sup> 165 Wn.2d 525, 199 P.3d 393 (2009).

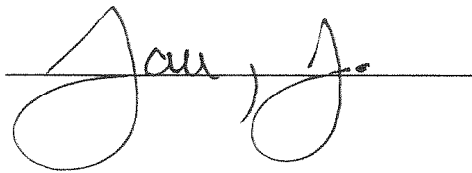
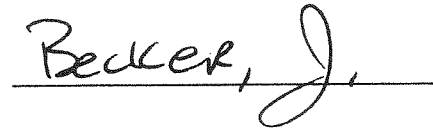
<sup>6</sup> Because DOC never effectively claimed an exemption to trigger the statute of limitations, we need not address Francis' other arguments to reverse the trial court's dismissal under CR 12(b)(6).

<sup>7</sup> Progressive Animal Welfare Soc'y v. University of Wash., 125 Wn.2d 243, 884 P.2d 592 (1994).

document was withheld, or whether Francis would be considered a prevailing party entitled to a remedy under the PRA, we remand for the trial court to determine whether attorney fees and costs are appropriate.<sup>8</sup>

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WE CONCUR:

A handwritten signature in cursive script, reading "Jan, J.", written over a horizontal line.A handwritten signature in cursive script, reading "Becker, J.", written over a horizontal line.

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<sup>8</sup> See Neighborhood Alliance of Spokane County v. County of Spokane, No. 27184-6, 2009 WL 4800090, at \*11 (Wash. Ct. App. Aug. 11, 2009) (“no cause of action under the PRA to enforce the re-disclosure of records known by [the requestor] to already be in its possession”) (citing Daines v. Spokane County, 111 Wn. App. 342, 44 P.3d 909 (2002) (holding that requestor was not a prevailing party when he already possessed the records)).